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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : 12th November, 2021
Delivered on : 29th November 2021

\+ **BAIL APPLN. 3487/2020**
\+ **BAIL APPLN. 3721/2020**

SACHIN MAKADE
BABLU BHAGWAN DANGRE ..... Petitioner/s
Through : Mr.Mohit Mathur, Sr. Advocate with Mr.Vinayak Chitale, and Mr.Abhay Pandey, Advocates.

versus

NARCOTICS CONTROL BUREAU ..... Respondent
Through : Mr.Subhash Bansal, SPP for NCB and Mr.Shashwat Bansal, Advocate.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. On 31.01.2020, on the basis of the information, recovery of 4200 tablets of Zolpidam (1.050kg); 6000 tablets of Alprazolam (1.200kg) was made from the parcel bearing No.*535153356* destined to Great Britain, lying at TNT India Private Limited (Fedex Courier) near Custom House, IGI Airport, which are narcotics medicine covered under the Narcotics Drugs and Psychotropic Substances Act, 1985 (hereinafter referred as *NDPS*). The consignor /accused Dipu Singh was located in Lucknow. He was apprehended and further recovery of 12000 tablets of Tramadol (4.800kg) was effected from his residence at Lucknow, UP, seized on 01.02.2020. Consequent upon the recovery from the parcel and from the

residence of Dipu Singh and based upon his voluntary statement under Section *67* of the NDPS he was arrested on 02.02.2020. He disclosed the names of Tejas patel, Sachin Makade/petitioner herein, Barun Chauahn, and Bablu Bhagwan Dangre/petitioner in Bail Application No.*3721/2020,* all of them tendered their statements under Section *67* of the NDPS and their association in the commission of crime.

2. On the basis of the information dated 09.02.2020 it came to the knowledge of prosecution that Tejas Patel and other persons of M/s.*Azesto Impex Private Limited, Nagpur* were involved along with Dipu Singh and he has made the shipments of Tramadol to them. Such persons were operating from Nagpur, Maharashtra. Accordingly, the team of NCB went to the Office of the firm M/s.Azesto Impex Private Limited at Nagpur, Maharashtra and it was found Sachin Makade and Barun Chauhan are the owners of the Firm and Tejas Patel was working with them, though having a separate firm in the name of *Krivi Impect*. The computer kept in the office was checked and entries of sending narcotic medicines were found. On inquiry from staff-Udit informed the main office of the firm is at Nagpur, Maharashtra. The laptops containing entries /documents relating to the illegal business of Tramadol, the printout of the documents and the said Laptop were seized under *Panchnama* dated 11.02.2020.

3. During further investigation, on 11.02.2020 the team of NCB searched the Office of M/s.Azesto Imprex Private Limited Nagpur, Maharashtra and in said office Sachin Makade, Barun Chauhan, Tejas Patel, Bablu and Amol were present. During investigations, personal

mobile phones and laptop of Sachin Makade, Barun Chauhan and Tejas Patel were checked and all were found to contain mail regarding orders of Narcotic tablets, chat/files were found. On inquiry they informed they book orders from Singapore for foreign countries through Lutz. Accordingly, mobile phones and laptops of Sachin Makade, Barun Chauhan and Tejas Patel were seized vide *Panchnama* dated 11.02.2020. The statements under Section *67* NDPS of the aforesaid person were recorded wherein they admitted their involvement in trafficking/ transportation/shipping/external dealings in Tramadol and other psychotropic substances/drugs from India to USA, UK and Singapore to and other European countries.

4. Petitioner Sachin Makade was arrested on 12.02.2020 and Bhagwan Dangare on 21.02.2020. During the investigation, reports along with data and exhibited documents were received from SIFS India Forensic Laboratory and from the mobile phones seized from Sachin Makade, data was extracted from mirror image showing huge chatting regard to NRX tablets and chatting with Lutz at Singapore, Bitcoin transactions. Other incriminating documents were also found. Further from the Laptop seized from Sachin Makade, a mirror image of data extracted, showed shipping orders of Tramadols, customer list, rate list of medicine, huge shipping orders, transaction of bitcoins, dark net etc. The CDR show they were in constant touch with customers and were involved in illegal trading of narcotics medicines. Thus, it was urged by the prosecution the accused persons are involved in illegal trafficking of Tramadols and other medicines at international level and thus had

violated Sections *24* and *27A* of the NDPS and per Section *37* NDPS, could not be released on bail.

5. The senior learned counsel for the petitioners submits there is no evidence of the petitioner being involved in the drug trafficking. It is argued the prosecution case as also the impugned order is based upon confessions recorded under Section *67* NDPS, but in view of *Tofan Singh vs State of Tamil Nadu* Criminal Appeal No.*152/2013* decided on 29.10.2020 such disclosure statements now are not admissible in evidence and cannot be relied upon.

6. It is argued no banned medical drug was found either in the office M/s.Azesto Impex Private Limited or from residences of these petitioners or from their person and only evidence against them is information which NCB allegedly recovered from their laptops and/or their mobile phones of some *earlier* dealings made by them. It is alleged the only evidence against the petitioner is the mobile chats etc, the evidentiary value of it, is already a subject matter of challenge before this Court in various petitions, as to if these are admissible at this stage or not without any certificate under Section *65B* of the Indian Evidence Act. Even otherwise, it is submitted under Section *37* NDPS probability of committing crime in future needs to be seen.

7. Reference is made to *Mohit Aggarwal vs NCB* Bail Application No.*2585/2020* decided on 16.03.2021 wherein the Court observed:-

> *"32. Keeping in mind the observations made in Tofan Singh (Supra) and upon a bare reading of petitioner's statement recorded on 09.01.2020, it is apparent that petitioner has not admitted that he was a party to the transaction or in possession of recovered and seized*

> *contraband substance. Though he has admitted in custody to have illegally traded the tablets under the NDPS (which is now inadmissible, unless proved otherwise) but since no recovery has been affected from his person or shop in this case, prosecution can only attempt to prove its case on the basis of circumstantial evidence, that is to say, by corroborating the* ***call detail record*** *or* ***other material available*** *and reliance cannot be solely placed upon disclosure statement of co-accused to keep him behind bars, especially when the recoveries of the instance were before the arrest of the petitioner and the statement given by co-accused has been retracted at the first available opportunity.*

8. It was argued by the learned senior counsel for the petitioners that recovery of Tramadol tablets were effected from Dipu Singh and there is nothing incriminating on record to connect the petitioners with such recoveries and the only evidence is information extracted from laptops, mobile etc, are inadmissible under the Indian Evidence Act without the requisite certificate under Section *65B* of the Indian Evidence Act.

9. I have gone through the record of the case.

10. The facts stated in the charge sheet do show *prima facie* the petitioners were dealing with narcotics and psychotropic substances in large scale. The petitioner Bablu Bhagwan Dangre allegedly had a company under the name of *Krivi Infotech* which used to deal with narcotic tables and an bank account in HDFC Bank, Nagpur and all the payments were received in this account in relation to the tramadol and other narcotic tablets were being used by petitioners along with Barun Chauhan. It is alleged all the orders of Tramadol tablets were received from India or other countries through mail or on phone were forwarded by Barun Chauhan for confirmation and thereafter to Mr.Lutz at

Singapore through mail. Petitioner Bablu Bhagwan Dangre disclosed the mail ID i.e. corewilliam001@gmail.com and petitioner Sachin Makade used to operate his laptop and had given the printout of mails in connection with orders of Tramadol tablets during the custody period with NCB.

11. Admittedly, the incriminating material has been seized from the mobiles, laptops of petitioners categorically demonstrate trafficking/ transportation/shipping/ external dealings in Tramadol and other psychotropic substances/drugs from India to UK and Singapore etc and petitioners are involved in external trading.

12. The simplictor statement under Section 67 of the NDPS Act may not be admissible under Section 25 of the Indian Evidence Act, however the disclosure leading to discovery of facts within their knowledge that they were indulging in trade of narcotics, including Tramadol tablets in conspiracy with other accused persons coupled with other incriminating material seized on record is relevant in terms of Section *27* of the Indian Evidence Act.

13. Even otherwise, per Section *66* of the NDPS Act, it is presumed the documents and other material seized and/or produced by the person are deemed to be conclusively proved and shall be used against such person *unless contrary is proved.*

14. Qua the contention of obtaining a certificate under Section *65B* Indian Evidence Act I may refer to *Arjun Panditrao Khotkar vs. Kailash*

Kushanrao Gorantayal and Ors. AIR 2020 SC 4908 wherein the Apex court observed:-

> *"49. On an application of the aforesaid maxims to the present case, it is clear that though Section 65B(4) is mandatory, yet, on the facts of this case, the Respondents, having done everything possible to obtain the necessary certificate, which was to be given by a third party over whom the Respondents had no control,* ***must be relieved of the mandatory obligation contained in the said Sub-section****."*

15. Similar view was taken in *Engineering Analysis Centre of Excellence Private Limited vs. The Commissioner of Income Tax and Ors.* 2021 (1) CCC 257. Nevertheless, I have been told the NCB has collected Section *65B* certificates from Cyber Forensic Expert, who examined the instruments and extracted the data.

16. In view of above, no ground is made out to release the petitioners on bail at this stage. Both the petitions are dismissed with liberty to move afresh after examination of public witnesses qua recovery. Pending application, if any, also stands disposed of.

17. Nothing opined herein above shall be treated as an opinion on merits of the case.

YOGESH KHANNA, J.

NOVEMBER 29, 2021
M/DV